

Miller, Alan

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE ADAMS GOLF, INC. : CONSOLIDATED
:
SECURITIES LITIGATION : C.A. No. 99-371 KAJ

Friday, August 11, 2006

Oral deposition of R. ALAN MILLER, taken pursuant to notice, was held at the offices of AKIN, GUMP, STRAUSS, HAUER AND FELD, LLP, 590 Madison Avenue, 18th Floor, New York, New York 10022-2524 commencing at 8:50 a.m. on the above date, before Beth A. Barkocy, Certified Shorthand Reporter and Notary Public.

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1 THE WITNESS: I am familiar with
2 event studies and the methodology of
3 conducting event studies, including in, I
4 suppose, the broadest sense, the methodology
5 suggested by Mr. James here in the sense of
6 using a regression analysis based tool in
7 order to measure statistical significance and
8 those sorts of things.

9 Having said that, these paragraphs
10 set forth a general description of that tool
11 or of the use of that tool but leave open
12 gaping sorts of questions as to the
13 application and construction of the tool and
14 analysis, which problems and questions
15 persist, then, as Mr. James proceeds
16 thereafter to apply what he describes here in
17 a general way.

18 MR. BESSETTE: I've got a line of
19 questions here, so we might as well take a
20 break. Thank you.

21 (Recess.)

22 BY MR. BESSETTE:

23 Q. Mr. Miller, leaving aside your
24 reservations about the application of the event study
25 as described by Mr. James in Paragraphs 17 to 22, you

1 Go ahead; do the best you can.
2 Also, I think that misstated his
3 testimony a little bit.

4 Answer it anyhow.

5 THE WITNESS: I'm okay on 17, 18,
6 and 19. On 20, the problem I have here is
7 that the second sentence says the relatively
8 smaller movements on other days are typically
9 the result of normal volatile trading
10 activity and do not represent the pricing
11 dash effects of material firm-specific
12 information semicolon such small movements
13 are not statistically distinguishable from
14 zero firm-specific movement.

15 I think that assigns a level of
16 meaning and certainty to the term
17 statistically significant that doesn't
18 comport with the real world; that is, I don't
19 argue that this interpretation is incorrect
20 from a purely academic standpoint and from
21 the interpretation of the meaning of those
22 terms by some pure academicians, at least in
23 recent years. The problem is in applying
24 this methodology for the purposes described
25 in the preceding three paragraphs, it implies

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1 agree that's an accurate description of the general
2 methodology of an event study; is that right?

3 MR. LEWIS: Objection to the form
4 and foundation.

5 Excuse me for a moment.

6 (Discussion held off the record.)

7 THE WITNESS: The reason I'm taking
8 so long with this question is that there's a
9 lot of extraneous information in these
10 paragraphs that's like commentary as opposed
11 to simply setting forth how an event study
12 might be structured or established or
13 conducted or something like that, that I
14 don't think are either necessary to the event
15 study or, in fact, may be wrong, were overly
16 assumptive about things that an event study
17 can tell you. That's why I'm thinking more
18 about this than maybe you intended. I'll let
19 it go with that.

20 BY MR. BESSETTE:

21 Q. As between Paragraphs 17 to 22, what
22 in those paragraphs do you find either extraneous to a
23 description of an event study or, I think you said,
24 maybe even wrong?

25 MR. LEWIS: Compound.

1 that it has these real world uses and effects
2 when the bright line nature of the
3 statistically significant factor is
4 artificial and, in fact, smaller movements
5 can occur as a result of information reaching
6 the market which might be weaker sorts of
7 information which might reach the market in
8 ways that are less distinct than a Wall
9 Street Journal announcement or Dow Jones
10 Business Wire announcement, for example, or
11 which might simply have less import than an
12 announcement that causes a reaction to rise
13 above the statistically significant
14 threshold, so I have that sort of problem
15 with that paragraph.

16 BY MR. BESSETTE:

17 Q. Before you move on to another
18 paragraph, is there anything more you want to say
19 about that sentence in Paragraph 20?

20 MR. LEWIS: Objection to form.

21 THE WITNESS: This also implies a
22 one-day, or less, event window, which is the
23 term that's used in event studies as well,
24 and that is artificial as well. It's also
25 not necessarily standard even in the academic

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1 Q. If I understand correctly, your
2 issue, I guess, with event studies not being
3 appropriate in the real world is because there are too
4 many subjective factors like what confidence level
5 you're going to use, what event window is going to be
6 used, so is it fair to say that because of those
7 subjective elements, you don't think that an event
8 study methodology accurately captures all
9 firm-specific information translated into price
10 movements?

11 MR. LEWIS: Objection to form.

12 BY MR. BESSETTE:

13 Q. You're using statistical
14 significance because there are too many variables?

15 MR. LEWIS: Objection to form,
16 overbroad; misstates his answer, lack of
17 foundation.

18 BY MR. BESSETTE:

19 Q. Do I have that right, generally?

20 A. Yeah, I think partially so. I think
21 I'd say this, though: I don't have any problem with
22 the use of event studies and we use them all the time
23 to do our work, and I'm using event study -- I don't
24 know whether that's -- whether to make it uppercase or
25 lower case -- in the broader sense of putting all of

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1 the information that you think is relevant onto a
2 template or piece of paper, a chart, a format, that
3 contains significant pieces of information to review
4 along with the information to make some sorts of
5 determinations that we're talking about making.
6 That's a process in a much broader sense that I think
7 is fine.

8 Using the event study as narrowly
9 defined in the purely academic world and including the
10 results of a regression analysis with fixed event
11 windows with artificially set thresholds, ignoring,
12 for example, the factor of trading volume, which most
13 academic event studies ignore, ignoring nonprinted
14 electronically data-retrievable sources of information
15 that probably existed at the time, and those sorts of
16 things, are some of the problems I have with the
17 narrower academically-oriented event studies as
18 described here and used by Mr. James.

19 In fact, if the event study in the
20 much broader sense is used properly and does include
21 all of the information that affects pricing, which is,
22 on a practical basis, very difficult to do, but if it
23 does that, includes trading volume data and stock
24 price movement data, the movement of comparable stock
25 prices, comparable indices, market indices and all

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1 those other factors, and then can be reviewed in a
2 flexible way to allow for multiple event window and
3 flexible event window review with no preset
4 thresholds, I think it can be a very useful tool and
5 we use it all the time for that.

6 Q. Mackinley, to whom you referred,
7 you're familiar that he uses event studies to test
8 whether stock reactions are different from zero for a
9 particular event window?

10 MR. LEWIS: Objection to form and
11 foundation.

12 THE WITNESS: Yeah, I think part of
13 Mackinley's work -- I'm trying to remember if
14 it's in the same article or not, and I can't.

15 In part of Mackinley's work, he does
16 make that definitional use of the event study
17 setting the academic conditions of threshold
18 and event window length and then makes the
19 statement, I believe, something to the effect
20 that anything under the threshold is
21 statistically the same as zero, or something
22 like that.

23 That's consistent with the academic
24 application of the tool, but Mackinley also,
25 I believe, in discussing how to do the event

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1 studies, talks about selection of window,
2 talks about selection of base period, which
3 is a major issue I've not discussed yet but
4 which also factors into all this and which is
5 also covered in the Dunbar and Tabak article,
6 and those are important factors that are not
7 covered in this description and which
8 Mr. James deviates from in his application of
9 the event study methodology going forward;
10 that is, all the practitioners say, and
11 Mr. James says, that the first step in
12 creating the Formula A relationship between
13 the variables is to use a clean base period
14 or control period or estimation period, I
15 think are the terms I've seen used to
16 describe it, to establish the relationship
17 between the variables.

18 Based on that, the predicted path of
19 the stock price or the dependent variable is
20 projected into the class period, the actual
21 stock price movement is then subtracted from
22 the predicted movement to determine what's
23 called a residual. That's tested against the
24 statistically significant threshold and the
25 academic version of the event study to

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1 determine whether you have a meaningful
2 movement or not under that definition.

3 In the case of an IPO, of course,
4 you can't do that because there's no clean
5 base period by definition.

6 BY MR. BESSETTE:

7 Q. Do you know what a rolling
8 regression is?

9 A. Yes.

10 Q. What is that?

11 A. It basically picks up from each
12 period -- we use day because it's commonly done in
13 days. It picks up from each day going forward and
14 eliminates the results of previous time periods. It's
15 an attempt to eliminate or -- I think it's an attempt,
16 if I remember this correctly, to eliminate
17 autocorrelation.

18 MR. LEWIS: Before you go on, I want
19 to raise something I should have raised at
20 the beginning of the deposition. Could you
21 identify your colleagues here for the record?

22 MR. BESSETTE: Sure. We have Amir
23 Rozen of Cornerstone with us, along with
24 counsel for the underwriters, who should, I
25 guess, identify themselves.

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1 MR. LEWIS: No, that's fine. I was
2 just wondering whether Mr. Rozen had actually
3 done any of the work on the James' report
4 because I thought part of our --

5 MR. BESSETTE: No.

6 MR. LEWIS: Okay.

7 BY MR. BESSETTE:

8 Q. The use of a rolling regression, can
9 that be used to sort of make up for a base period as
10 you described it, sort of a substitute?

11 MR. LEWIS: Objection to form.

12 THE WITNESS: That's an interesting
13 factor. If you -- it doesn't get you there
14 and it probably corrects, to some degree, for
15 not having a clean base period. I think
16 because you're at a higher base level than
17 you would otherwise be, assuming a class
18 period that contains fraud and an inflated
19 stock price, so that the application of the
20 threshold gets you too high a trigger point.
21 There's still problems with not having a
22 correct base period. It probably does
23 correct to some degree for it, I think, but
24 I'm sure not completely.

25 BY MR. BESSETTE:

1 Q. Did Dr. James use a rolling
2 regression in his work?

3 A. I believe he did do a -- one of his
4 alternatives involved a rolling regression. As I
5 recall, his results weren't very different with the
6 rolling regression, if I recall that correctly.

7 Q. Let's go back to event studies for a
8 second. You made reference several times to the
9 academic version, so why don't we just call the
10 academic version of the event study and then a real
11 world, which you've described as well.

12 A. Sure.

13 Q. Certainly, there are legions of
14 published peer-reviewed articles on the academic
15 version of the event study and its use on measuring
16 stock price movement, right?

17 MR. LEWIS: Objection to form.

18 THE WITNESS: There are a lot. It
19 certainly is done. The procedure is done
20 quite a lot in the finance field in academia
21 and, sure, there have been a lot of articles
22 involving the use of it.

23 We subscribe, for example, to at
24 least half a dozen finance-type journals,
25 Journal of Finance, Journal of Financial

1 Economics, Review of Financial Studies, those
2 kinds of things that often have articles in
3 them, very often containing academic event
4 study work.

5 BY MR. BESSETTE:

6 Q. Are there any peer-reviewed articles
7 that you're aware of that use the real world version
8 of the event study as you've described it here today
9 to measure stock price movements?

10 MR. LEWIS: Object to the form and
11 foundation.

12 THE WITNESS: The principles of the
13 real world approach are set forth in the
14 articles I referenced previously.

15 BY MR. BESSETTE:

16 Q. From NERA?

17 A. Two from NERA and, to some degree,
18 Mackinley's article, the one article, at least, by
19 Mackinley. Mackinley has written a lot of stuff. At
20 least, I think, the one article that I think he may
21 have been the sole author of discusses having a clean
22 base period, having an appropriate event window
23 length.

24 NERA particularly uses several
25 different levels of threshold for statistical

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1 Trading volume appears, actually, on
2 both segments. There are two parts to Exhibit B.
3 There's a part that has simply price and percent
4 change data along with Adams' volume for Adams' six
5 other golf companies and what's called a peer group,
6 which is a blended index of those companies. That has
7 Adams' volume data on it and it's also contained in
8 the second part of this exhibit which has Adams'
9 volume price, percent price change, and then a listing
10 of news items in the second part.

11 When we can, we try to put all this
12 on one page but we couldn't get there.

13 Q. Did you employ any tests to
14 determine whether the volume data was statistically
15 significant --

16 MR. LEWIS: Objection to form.
17 BY MR. BESSETTE:

18 Q. -- as part of your event study?

19 A. When we went through this data,
20 yeah, we noted what normal or average trading volume
21 was over a period of -- I think it was weeks at the
22 beginning of the class period, and then used that as a
23 base to observe how trading volume occurred daily
24 throughout the class period and thereafter.

25 Q. Where do you indicate in Exhibit B,

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1 if anywhere, the normal trading volume and how you
2 characterize the deviations from normal; is that
3 reflected here in Exhibit B anywhere?

4 A. No, we were doing that just as we
5 went along reviewing the data and the news information
6 after this was assembled.

7 Q. Was this sort of a subjective
8 analysis of how much deviation you or your team saw in
9 what you considered -- away from what you considered
10 normal trading volume for Adams Golf?

11 MR. LEWIS: Objection to form.

12 THE WITNESS: No, I wouldn't call it
13 subjective because we didn't have any -- I
14 can't think of what the right word would be
15 -- any purpose or bias to the review; that
16 is, I call it objective because we were
17 simply looking at the data to see what
18 happened to it as we went through it
19 chronologically.

20 BY MR. BESSETTE:

21 Q. Did trading volume -- deviating from
22 normal trading volume to any degree, how did that
23 impact your opinion that there was news about gray
24 marketing on that day, on any given day?

25 MR. LEWIS: Objection to form and

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1 foundation.

2 THE WITNESS: (No response.)

3 MR. LEWIS: Do you understand the
4 question?

5 THE WITNESS: I think so. When we
6 first look at the information, we don't know
7 what we're going to find until we look at it,
8 so it's sort of the other way around in a
9 sense; that is, we tend to look at the
10 trading volume information as it develops
11 over time and then look to the right and see
12 is there anything obvious that that was
13 associated with in price change or news that
14 we know about, then we sometimes go backwards
15 when we get information and say, okay, here's
16 some information that may have become known
17 to market participants, was there any
18 noticeable change in the trading volume, so
19 it's sort of iterative in that sense.

20 We start out with knowing nothing
21 and seeing what you learn by looking at it,
22 and then you start going back as you're
23 filling in the news items and learn things
24 and say, you know, what was the effect of
25 this sort of thing. I'm not sure it's quite

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1 as clean as you're asking me.

2 BY MR. BESSETTE:

3 Q. You agree that stock prices can move
4 because of general market conditions?

5 MR. LEWIS: Objection, vague and
6 overbroad.

7 THE WITNESS: I think there are --
8 yeah, in general, I think that's true. The
9 stock prices can move because of factors that
10 affect companies similarly which would also
11 affect a particular company's expected future
12 earnings.

13 BY MR. BESSETTE:

14 Q. A stock price can move because of
15 general industry conditions as well?

16 MR. LEWIS: Objection to form.

17 THE WITNESS: Same answer.

18 BY MR. BESSETTE:

19 Q. Do you agree that a stock price can
20 move because of company-specific conditions which are
21 unrelated to, for example, in this case, the specific
22 allegations in this case, so in other words, do you
23 agree that Adams Golf's stock price moved during the
24 class period because of company-specific information
25 that was unrelated to any of the allegations in the

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1 second amended complaint?

2 MR. LEWIS: Objection to form and
3 foundation.

4 THE WITNESS: Can I have that back,
5 please?

6 (The pending question was read
7 back.)

8 MR. LEWIS: Note my objection to
9 form and foundation.

10 THE WITNESS: Sure. Generally
11 speaking, stock prices move in reaction to
12 company-specific information as a general
13 matter. In this case, Adams may have moved
14 in response to company-specific information
15 other than related to the allegations in the
16 complaint, if I understand your question
17 correctly. I don't believe that Mr. James
18 has demonstrated that that occurred in any
19 way and, although it's possible, it occurs to
20 me in the analysis we did that the most
21 likely cause of the overall movement during
22 the period was related to the allegations in
23 the complaint. I think I'll leave it at
24 that.

25 BY MR. BESSETTE:

1 related to information other than the
2 allegations in the complaint, and he has, in
3 my opinion, not established that at all.
4 That's the topic about -- one of the topics
5 about which I was asked to examine the
6 information and opine.

7 During the course of my review, I
8 determined that overall during the class
9 period, the most likely cause of the stock
10 price decline was related to the allegations
11 in the complaint. I don't recall whether I
12 established with respect to other
13 company-specific information on certain days
14 in each specific instance whether there may
15 have been reaction to other news as well that
16 was separable from the reaction to
17 information complained of, and that wasn't
18 necessary in order to accomplish the purpose
19 for which we were retained.

20 BY MR. BESSETTE:

21 Q. You didn't see any evidence, is it
22 fair to say, in all of your work that the Adams Golf
23 stock price movement during the class period was a
24 result of firm-specific information unrelated to
25 plaintiff's allegations?

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1 Q. Did you test whether Adams Golf
2 stock price moved in the class period in response to
3 company-specific information unrelated to plaintiff's
4 allegations in the case?

5 MR. LEWIS: Objection to form.

6 THE WITNESS: Sure. We took a look
7 at all the information we've presented here
8 as well as information I described in my
9 report and were aware of all that as it fit
10 into the chronology of the stock price
11 movements and volume changes in Adams through
12 the period.

13 BY MR. BESSETTE:

14 Q. Did you find as a result of your
15 testing that Adams Golf stock price moved in the class
16 period as a result of firm-specific information
17 unrelated to plaintiff's allegations?

18 MR. LEWIS: Objection to form,
19 overbroad.

20 THE WITNESS: Our retention in this
21 matter focuses on a couple of things with
22 respect to that topic, and one is the
23 determination of whether Mr. James has
24 demonstrated that that occurred, that is,
25 that the movement during the class period was

1 MR. LEWIS: Objection to form.

2 THE WITNESS: No, I just gave you a
3 much more complete answer than that.

4 BY MR. BESSETTE:

5 Q. Did you see any evidence?

6 A. That's my answer, that I have seen
7 no evidence that Mr. James established that that was
8 the case.

9 Q. I didn't ask, though, what he
10 established. I want to know from the tests you said
11 you did, did you see any evidence that the price moved
12 as the result of firm-specific information unrelated
13 to plaintiff's allegations?

14 MR. LEWIS: Objection to form and
15 foundation.

16 THE WITNESS: The second part of
17 what I answered with respect to that was that
18 I believe the most likely overall cause of
19 the stock price decline during the period was
20 related to the plaintiff's allegations.
21 Having said that, when we went through and
22 reviewed each day's trading results in terms
23 of price movement, volume, associated it with
24 news that was printed or published on days
25 when we could identify that, and considered

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1 the availability to the market of information
2 connected with plaintiff's allegations, we
3 didn't attempt to separate out whether each
4 day's movement related solely to one or the
5 other nor did we think we could based on the
6 types of information dissemination that
7 appeared to be occurring with respect to
8 plaintiff's allegations and the information
9 that related to that. It appeared that the
10 overall new sort of information that was
11 reaching the market during the class period
12 that would likely cause the observed market
13 effect was related to plaintiff's
14 allegations.

15 BY MR. BESSETTE:

16 Q. What statistical tests did you
17 perform in your event study, sir?

18 MR. LEWIS: Objection, asked and
19 answered, vague and ambiguous.

20 THE WITNESS: Just the ones we've
21 talked about so far where we reviewed the
22 volume changes on an ongoing basis throughout
23 the class period and thereafter, the price
24 changes on an absolute and percentage basis
25 in Adams' stock price, the changes in the

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1 various index and comparable company
2 movements that we've talked about on an
3 absolute and percentage basis, on each day
4 going through the period and, in a couple of
5 cases, on intraday data as well.

6 BY MR. BESSETTE:

7 Q. When you say absolute and percentage
8 change, you're talking about the raw dollar draw on
9 any given day translated into a percent, right?

10 A. Correct.

11 Q. Are you aware of any case law that
12 says one cannot properly show causation with just raw
13 dollar or raw percentage stock price draws on any
14 given day?

15 MR. LEWIS: Objection to form,
16 overbroad.

17 THE WITNESS: I'm not sure -- I
18 don't think I've seen one that's that clear
19 about that. I've seen a couple of cases that
20 discuss that issue that I can recall to some
21 degree. I'm not sure that I've seen one that
22 takes that position on that firm a basis.

23 BY MR. BESSETTE:

24 Q. Do you think there's any validity to
25 the criticism of using raw dollar or raw percentage

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1 stock price drops in trying to show causation or
2 association with specific information; do you see any
3 validity in the criticism of using that?

4 MR. LEWIS: Objection to form,
5 overbroad, lack of foundation.

6 THE WITNESS: Of using raw price
7 data and percentage changes?

8 BY MR. BESSETTE:

9 Q. Right, to draw conclusions about
10 association or causation with specific information.

11 MR. LEWIS: Objection to form,
12 foundation.

13 THE WITNESS: Trying to think as a
14 general matter, if I can. I don't think so,
15 at least not in the sense that we do, and I'm
16 trying to then extend this as to whether
17 there's a more general case, that is, having
18 the benefit of being able to observe data
19 over flexible event windows or for multiple
20 days prior to, during, and after a study day,
21 for example, and seeing the same data for
22 index and comparable company movements, being
23 able to consider the type of information, the
24 way it reaches the market, its degree of
25 complexity, which is another topic, since you

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1 jogged my thinking about this, that I would
2 add to the morning's discussion about event
3 studies in general and their limitations;
4 that is, the complexity of information can be
5 a significant factor in the speed of reaction
6 to news. There's a good paper on that that's
7 footnoted in my report or my rebuttal report
8 that deals with that topic.

9 I don't see any problem with using
10 that type of data for your analysis,
11 especially if the comparison is a purely
12 academic version of an event study that sets
13 some sort of a threshold based on nothing but
14 academic convention and based on fixed data,
15 fixed event windows or fixed reaction times,
16 not taking into consideration the types of
17 information or the method of dissemination to
18 market participants and those kinds of
19 factors.

20 BY MR. BESSETTE:

21 Q. Did market and/or industry factors
22 affect Adams Golf stock price during the class period?

23 MR. LEWIS: Objection to form,
24 foundation, compound.

25 THE WITNESS: I've seen a couple of

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<p>1 types of information about that in the</p> <p>2 materials we've reviewed and in the data.</p> <p>3 First off, I don't believe Mr. James has</p> <p>4 established that that occurred at all.</p> <p>5 Secondly, I think the contemporaneous</p> <p>6 information about that was somewhat</p> <p>7 conflicting in various ways; that is, there</p> <p>8 was some discussion of whether market index</p> <p>9 decline or industry condition decline may</p> <p>10 have affected Adams' stock price by people</p> <p>11 contemporaneously, and then there was other</p> <p>12 discussion that it didn't in that, for</p> <p>13 example, Callaway's decline was due at least</p> <p>14 partly to the success of Adams and Orlimar</p> <p>15 and Barney Adams' assessment at one point</p> <p>16 that Orlimar's performance was overblown and</p> <p>17 peaked and all sorts of things, so I've seen</p> <p>18 all sorts of assessments of that factor in</p> <p>19 the information we've come across so far.</p> <p>20 BY MR. BESSETTE:</p> <p>21 Q. My question was what's your opinion;</p> <p>22 did market and/or industry factors, in your opinion,</p> <p>23 affect Adams Golf stock price during the class period?</p> <p>24 MR. LEWIS: Objection.</p> <p>25 BY MR. BESSETTE:</p>	<p>1 likely explanatory factor for Adams' stock</p> <p>2 price decline was associated with the items</p> <p>3 complained of in the complaint.</p> <p>4 BY MR. BESSETTE:</p> <p>5 Q. I understand. I'm not asking you to</p> <p>6 rank what caused the stock drop. I know you think the</p> <p>7 most likely factor is plaintiff's allegations.</p> <p>8 My question is did market or</p> <p>9 industry factors affect Adams Golf stock price. I</p> <p>10 don't want you to have to quantify it right now or</p> <p>11 tell me whether it's more or less than something else.</p> <p>12 In your opinion, did it affect Adams Golf stock price,</p> <p>13 market and industry factors, that is, during the class</p> <p>14 period?</p> <p>15 MR. LEWIS: All the same objections</p> <p>16 as before, asked and answered, beyond the</p> <p>17 scope of his engagement.</p> <p>18 MR. BESSETTE: If it's beyond, he</p> <p>19 can say he has no opinion. What I'm asking</p> <p>20 is do you have an opinion.</p> <p>21 MR. LEWIS: You're asking the word</p> <p>22 opinion -- there are all kinds of meanings to</p> <p>23 opinions. Does he have a personal view based</p> <p>24 on --</p> <p>25 MR. BESSETTE: I understand.</p>
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<p>1 Q. What's your opinion?</p> <p>2 MR. LEWIS: Vague, overbroad, lack</p> <p>3 of foundation, and beyond the scope of his</p> <p>4 work as a rebuttal expert.</p> <p>5 THE WITNESS: My opinion is what</p> <p>6 I've given you so far on this topic plus</p> <p>7 what's set forth in my report, is that based</p> <p>8 on Mr. James' work, based on our review of</p> <p>9 the data, including market and industry data,</p> <p>10 Adams' stock price data, comparable company</p> <p>11 data, and the information we've reviewed, the</p> <p>12 most likely explanatory factor for Adams'</p> <p>13 overall decline during the period was related</p> <p>14 to the information in the complaint.</p> <p>15 BY MR. BESSETTE:</p> <p>16 Q. As you sit here, do you have an</p> <p>17 opinion whether market or industry factors affected</p> <p>18 Adams Golf stock price during the class period?</p> <p>19 MR. LEWIS: Objection.</p> <p>20 BY MR. BESSETTE:</p> <p>21 Q. That's a yes or no.</p> <p>22 MR. LEWIS: Vague, ambiguous, lack</p> <p>23 of foundation, beyond the scope.</p> <p>24 THE WITNESS: No, my opinion on that</p> <p>25 is what I've given you on it, that the most</p>	<p>1 MR. LEWIS: Let me finish.</p> <p>2 MR. BESSETTE: I got the objection.</p> <p>3 Just state your objection. We don't need to</p> <p>4 go into a lot of explanation here.</p> <p>5 MR. LEWIS: You don't need to cut me</p> <p>6 off. I don't normally cut you off.</p> <p>7 BY MR. BESSETTE:</p> <p>8 Q. As an expert, do you have an opinion</p> <p>9 that --</p> <p>10 MR. LEWIS: Same objection, asked</p> <p>11 and answered.</p> <p>12 THE WITNESS: Not beyond what I've</p> <p>13 given you on this; that is, I think as we've</p> <p>14 discussed, as a general matter, I'm not</p> <p>15 prepared to say the general market and</p> <p>16 industry factors do not affect a stock price</p> <p>17 or any stock price in any way over any period</p> <p>18 of time.</p> <p>19 Specifically related to Adams during</p> <p>20 the class period, I've reached the opinions</p> <p>21 that I've given you so far and that are</p> <p>22 contained in my reports and haven't gone</p> <p>23 beyond that as to answer your question any</p> <p>24 further in that I've been retained to study</p> <p>25 whether negative loss causation has been</p>

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1 established by Mr. James, to put that in
2 shorthand, and to otherwise study the factors
3 that I've been asked to study and render
4 opinions on, which I've given you.

5 MR. LEWIS: When you get to a good
6 point, I'd like a five-minute break.

7 BY MR. BESSETTE:

8 Q. Have you quantified the effect, if
9 at all, that market and/or industry factors had on
10 Adams Golf stock price during the class period?

11 MR. LEWIS: Same objections;
12 misstates his testimony.

13 THE WITNESS: I think that was part
14 of what I've answered in the last couple of
15 answers. I've noted that in connection with
16 my retention, I've opined that Mr. James has
17 not established any such relationship or
18 cause or effect and have expressed what I
19 believe to be the most likely factor that
20 affected Adams' stock price during the class
21 period. I'll refer you to my previous
22 testimony on that.

23 BY MR. BESSETTE:

24 Q. In your work in this case, have you
25 made any effort to consider the effect of market or

1 its volume activity, its absolute and percentage price
2 changes at various times and dates and groups of dates
3 throughout the class period, the movements of other
4 industry companies on those dates and groups of dates
5 throughout the period, the movement of overall market
6 indexes and comparable company indexes throughout the
7 class period and on each date and groups of dates
8 during the class period. Having reviewed all that
9 information in the flexible way that we've discussed
10 earlier today, I've come to the opinions that I came
11 to, and also having reviewed Mr. James' work in this
12 area in his report and his rebuttal report, I've come
13 to the opinions that I've given you and set forth in
14 my reports.

15 MR. BESSETTE: It's time for a
16 break.

17 (Recess.)

18 BY MR. BESSETTE:

19 Q. Mr. Miller, how do you define
20 materiality as used in this case?

21 MR. LEWIS: Objection to form.

22 THE WITNESS: I tend to follow the
23 definition set forth in TSC versus Northway
24 of materiality being information which would
25 likely be important to a reasonable investor

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1 industry factors on Adams Golf stock price during the
2 class period?

3 MR. LEWIS: Objection, asked and
4 answered, vague and ambiguous.

5 THE WITNESS: Sure.

6 BY MR. BESSETTE:

7 Q. Beyond having the opinion that
8 Mr. James has not established that causal
9 relationship, you have no opinion, as you sit here, to
10 what extent, if at all, market or industry factors
11 actually affected Adams Golf stock price during the
12 class period; is that right?

13 MR. LEWIS: Objection, form,
14 foundation; misstates prior testimony.

15 THE WITNESS: No, I don't think
16 that's what I said.

17 BY MR. BESSETTE:

18 Q. Can you clarify that?

19 A. Hopefully. I believe the most
20 likely effect that caused -- the most likely
21 information or factor that caused Adams Golf stock
22 performance over the class period was related to the
23 allegations in the complaint. That opinion was
24 reached after observing Adams' stock price movement
25 over the class period as we have discussed along with

1 in considering an investment decision.

2 BY MR. BESSETTE:

3 Q. That's the operating definition that
4 you use?

5 A. Right.

6 Q. What's your methodology for
7 determining whether information is material to
8 investors?

9 MR. LEWIS: Generally or in this
10 case or both?

11 BY MR. BESSETTE:

12 Q. If it differs, you can tell me.

13 A. Generally and in this case, but

14 generally first, I start with how securities prices
15 are formed and created and what type of information
16 goes into that process and why, and it sort of evolves
17 from that; that is, based on, I suppose, beginning
18 with investment theory, corporate finance theory in
19 texts, articles, and that sort of thing, representing
20 the value of a security as embodying the expected
21 future earnings and cash flows to be derived for that
22 security and following that through, then my work
23 experience we went through briefly this morning, has
24 informed me as to what factors are important to
25 participants in the investment community, and they are

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1 it that gives you a clue as to the other
2 questions I raised, for example, and whether
3 it would therefore likely affect future
4 earnings and cash flows.

5 BY MR. BESSETTE:

6 Q. Is there an objective test you would
7 utilize?

8 MR. LEWIS: Object to the form.

9 THE WITNESS: Yeah, I think that our
10 whole conversation here has been about
11 objective testing and observation, and that
12 would be whether it would reasonably be
13 expected to have an impact on future earnings
14 and cash flows.

15 BY MR. BESSETTE:

16 Q. How would you determine that? If
17 you had this information and you were trying to
18 determine whether it was material, how would you go
19 about doing it?

20 MR. LEWIS: Vague, ambiguous,
21 speculative.

22 THE WITNESS: I may have
23 misunderstood you before.

24 I'd try to find out the answers to
25 those questions you give me. If this was,

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1 for example, contemporaneous and I was an
2 analyst following the stock, I'd probably
3 call the company and ask them what's with the
4 new process here or new technology, why are
5 you doing it, what do you hope to accomplish,
6 what's it costing you, what's the return on
7 the investment, what effect does it have on
8 the clubs, does it do anything for your
9 marketing.

10 You'd run through, basically, the
11 business plan effects of that information to
12 determine whether it was going to likely have
13 an effect on future cash flows and earnings.

14 BY MR. BESSETTE:

15 Q. Would you test that the stock price
16 of the company moved because of the release of that
17 information?

18 MR. LEWIS: Objection to form.

19 THE WITNESS: If you're looking
20 backwards? Yeah, that would be one factor
21 you'd look at to see whether there was
22 anything else suggested by that because that
23 news in itself, if that's all the news you
24 got and the stock price moved on that day,
25 you'd have to look beyond that to see why

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1 somebody bought or sold in enough volume to
2 move the market price based on that
3 information, and the implication would be
4 that somebody thought something further about
5 it than what it is you learned.

6 BY MR. BESSETTE:

7 Q. Would your materiality determination
8 take into account the raw dollar stock price movement
9 or would you have to see a statistically significant
10 stock price movement?

11 MR. LEWIS: Objection to form and
12 foundation, incomplete.

13 THE WITNESS: The way we analyze
14 things and most market participants tend to
15 analyze things involves raw stock price
16 movement and percentage movement and very
17 often relative to some other information such
18 as market data, comparable company data and
19 that sort of the thing as we've discussed
20 earlier today. I think I'll leave it at
21 that.

22 BY MR. BESSETTE:

23 Q. As part of your materiality
24 determination, you would test to see if the broad
25 market or industry which the company was part of moved

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1 on the day of that released information?

2 MR. LEWIS: Objection to form;
3 mischaracterizes the testimony.

4 THE WITNESS: In the sequence of
5 things that you've asked me and I've
6 answered, if you're looking backwards at
7 information like that historically, and
8 that's a piece of information you're looking
9 at, one of the things that you would do is to
10 look at the market movement, as with all
11 information like this that we've been talking
12 about, but your primary focus on materiality
13 is importance to investors and in the context
14 of generation of future earnings and cash
15 flows, and that's the primary way that I
16 would look at that information as well.

17 BY MR. BESSETTE:

18 Q. Did you determine in this case,
19 Mr. Miller, that information about the gray market was
20 material to investors in Adams Golf?

21 A. Yeah, I think I've always viewed
22 this in a slightly different time context. I think I
23 determined it would have been material to investors in
24 Adams Golf at the time of the IPO and became material
25 to them as they learned of it over time.

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1 Q. What's the basis for that
2 determination?

3 A. The would have been important is in
4 the context we've just been discussing because the
5 existence, risk, and impact of the gray marketing is
6 something that can have a significantly negative
7 effect on a company's ability to maintain margins and
8 sales going forward and, therefore, would directly
9 affect the generation of earnings and cash flow, so
10 it's a pretty direct connection in that sense to the
11 earnings and cash flow testing or modeling or
12 examination that we've been talking about in this
13 context.

14 It became important, I think,
15 including the materials I've reviewed in this matter,
16 including Mr. Adams' commentary on the importance of
17 gray marketing and its effects on the company during
18 the class period, toward the end of the class period
19 and thereafter, as quoted in some trade publications
20 after the class period but referring back to the class
21 period, and as discussed by analysts during and toward
22 the end of the class period. I think those were all
23 indicators contemporaneously that people found it to
24 be an important issue. I think Mr. Magnussen's
25 declaration and testimony to that effect demonstrated

1 Q. At least, then, it's your opinion
2 that the risk and impact of gray marketing was
3 material to investors or potential investors in Adams
4 Golf at the time of the IPO?

5 A. Right.

6 Q. Did you do any statistical tests to
7 test your opinion that it was material at the time of
8 the IPO?

9 A. If I understand your question
10 correctly, I don't know that you can, that is, with
11 respect to the stock price as opposed to the potential
12 future impact on earnings and cash flows. The
13 statistical test wouldn't be able to be done on the
14 stock price because there isn't any at the time of the
15 IPO. You have, at the instant of the IPO and
16 thereafter, a stock price that exists that is in
17 response to all information then in the market. What
18 was then in the market, apparently, was the prospectus
19 as the dominant piece of information which did not
20 contain a risk disclosure about gray marketing
21 specifically, and you had the June 9 press release
22 about the Costco matter in the market, about gray
23 marketing on a widespread basis, so that the
24 prospectus, in my view, clearly trumping the month-old
25 press release at that time which was ambiguous about

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1 that. I think Ms. Ochoa goes into some significant
2 detail about that, and all those, I think, are reasons
3 why I believe that it would have been important at the
4 outset and became important as various market
5 participants appeared to learn of it.

6 MR. BESSETTE: O-c-h-o-a.

7 MR. LEWIS: M-a-g-n-u-s-s-e-n.

8 BY MR. BESSETTE:

9 Q. Looking at your report,
10 Paragraph 13, which starts on Page 7, the first
11 sentence says there can be no question that the risk
12 and impact of gray marketing were material to
13 investors or potential investors in Adams Golf. Is
14 that as of the time of the IPO, sir?

15 MR. LEWIS: Objection to form.

16 THE WITNESS: I tend to think of
17 this topic in the time frames I explained
18 before. I think when I wrote this, I was
19 probably thinking first of IPO, then of
20 aftermarket. The way this reads, it could be
21 either, and as it goes forward in the
22 paragraph, it looks like it gets into
23 aftermarket, so this probably applies to
24 both.

25 BY MR. BESSETTE:

1 gray marketing anyway and its effect on the company
2 would lead you to not have a testable situation there
3 with respect to the stock price.

4 Q. Did you or did you not perform a
5 statistical test or observation to support your
6 opinion that at the time of the IPO, the risk and
7 impact of gray marketing was material to Adams Golf's
8 investors?

9 MR. LEWIS: Objection to form, asked
10 and answered, ambiguous.

11 THE WITNESS: In the sense of the
12 impact on likely future earnings and cash
13 flows, I thought that the impact was likely
14 substantial and didn't need to be tested in
15 that sense statistically. In terms of any
16 stock pricing, you couldn't do so for the
17 reasons I just said. I did observe Mr. James
18 has made the case that a statistical test
19 could be done on the IPO price and its
20 movement thereafter and believe that there's
21 no basis for that at all for the reasons I
22 just said.

23 BY MR. BESSETTE:

24 Q. You did not perform a statistical
25 test to support your opinion, A, because you don't

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1 think one is valid or, B, could be done, but the
2 bottom line is you did not perform one to support your
3 opinion; do I have that right?

4 MR. LEWIS: Objection to form.

5 THE WITNESS: For the reasons I
6 said, yes.

7 BY MR. BESSETTE:

8 Q. The sentence that is at the end of
9 Page 7 and going over to Page 8 that says lower
10 retailers' margins often translate into lower sales,
11 what's the basis for that opinion, sir?

12 A. As a general statement, I think
13 that's an obvious factor from observing the conduct of
14 business over 30-some years, that businesses tend to
15 succeed -- businesses that are sales-oriented,
16 particularly with consumer goods, if we can narrow it
17 down somewhat, tend to succeed largely based on their
18 ability to generate sales and maintain successful
19 channels of distribution and lowering retailers'
20 margins reduces their incentive to sell. Very few
21 products enjoy monopolies and are subject to
22 competition and that sort of thing and usually suffer
23 from lowering retailers' margins.

24 There's a significant SBA study that
25 was done on this topic about ten or 15 years ago, 20

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1 years ago, exploring the premise that most small
2 businesses failed for lack of capital. What they
3 found instead was most small businesses failed for
4 costs and problems in establishing distribution
5 channels, particularly allowing retailer margins and
6 distributor margins as well, so I think that's a
7 pretty obvious business factor.

8 It's also, I think, part of the
9 information that I observed from Mr. Magnussen and I
10 think from other industry commentators who suggested
11 that part of the Orlimar sales growth occurred through
12 their ability to increase retailer incentive or
13 margins over a short period of time in the spring
14 of '98. That was consistent with the overall view I
15 have about that.

16 Q. You've given me the basis for that
17 statement. The last statement there, earnings are
18 therefore reduced directly by the existence of gray
19 marketing, do you have any analysis supporting that
20 statement?

21 MR. LEWIS: Objection to form.

22 THE WITNESS: Partially general on
23 the same sort of basis that when gray
24 marketing occurs, companies generally feel
25 obliged to make the retailers feel

1 well-supported and make them whole in terms
2 of their margins. If the retailer has to
3 lower the price, the only way the
4 manufacturer can do that is to lower his
5 price or provide an incentive at some cost to
6 generate replacement sales or incentivize the
7 retailer. Again, that also appeared to be
8 the case with Adams where they felt the need
9 to provide free golf bags as part of their
10 program to counter gray marketing.

11 BY MR. BESSETTE:

12 Q. Did you have any evidence that Adams
13 Golf's earnings were reduced directly by the existence
14 of gray marketing?

15 MR. LEWIS: Objection to form,
16 foundation.

17 THE WITNESS: Yeah, I think the most
18 direct evidence I can think of is Mr. Adams'
19 October 8 or 10 memo -- can't remember which
20 day -- in which he discusses the expected
21 impact on fourth-quarter sales of
22 approximately 20, 25 percent. Anytime you
23 reduce sales, you almost always reduce
24 earnings.

25 BY MR. BESSETTE:

1 Q. How about at the time of the IPO,
2 any evidence that you saw?

3 MR. LEWIS: Objection to form.

4 THE WITNESS: That earnings were
5 reduced by gray marketing?

6 BY MR. BESSETTE:

7 Q. Yes.

8 MR. LEWIS: Objection to form.

9 THE WITNESS: I think at the IPO, I
10 was focused more on the likely expected
11 effect of gray marketing on future earnings
12 in sales as a risk factor. As it turns out,
13 I believe Mr. Magnussen cited instances, and
14 in Mr. Grace's report there is an exhibit, I
15 think it was, to Mr. Grace's report or his
16 rebuttal report -- I'm sorry, I can't
17 remember -- that set out a listing of
18 customer complaints about gray marketing and
19 what the various retailers were trying to do
20 to counter that, and at some time period
21 which I'm pretty sure was prior to the IPO,
22 Adams was making some retailers whole for
23 supplying customers at reduced prices for
24 clubs that were appearing in Costco, so to
25 the extent that they had to undertake that,

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<p>1 type of disclosure of the issue of gray 2 marketing. 3 By the way, I would suggest that the 4 entire press release was new information, not 5 just the portion of it you asked me about, 6 and it would be taken by the market in its 7 entirety. That doesn't say that there 8 weren't some people who knew in the spring of 9 '98, and I think it was April and May, that 10 there was some level of gray marketing going 11 on. 12 I'm thinking of some of the 13 references in Mackenzie's work, and some of 14 the complaint letters, I think, referenced in 15 Mr. Grace's work, that there was some level 16 of knowledge about some of it, but I think in 17 terms of public information to the market, 18 that this is the first such piece, but when I 19 say "to the market" here, we have to remember 20 there was no public stock at that time, so 21 even though it was released to the market and 22 to the public, there would have been no 23 community of stockholders or analysts, for 24 example, to follow this at the time. 25 BY MR. BESSETTE:</p>	<p>1 BY MR. BESSETTE: 2 Q. -- or old information? 3 MR. LEWIS: Object to the form. 4 BY MR. BESSETTE: 5 Q. The part I just read. 6 MR. LEWIS: Same objection. 7 THE WITNESS: I think the -- 8 BY MR. BESSETTE: 9 Q. Let me withdraw it and make the 10 question a little more precise. 11 The information about Tight Lies 12 showing up in Costco, prompting a lawsuit, is that new 13 information or old information? 14 MR. LEWIS: Objection to form and 15 foundation. 16 THE WITNESS: That's a good 17 question. It's technically old information 18 by that point because they refer to 19 information that had occurred sometime 20 previously and had been discussed in the 21 press release sometime previously, but it's 22 the type of information in the form of 23 distribution that would fit into the messier 24 category we talked about earlier as opposed 25 to the clean, simple major national</p>
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<p>1 Q. This press release was 2 contemporaneous with the IPO roadshow, was it not? 3 MR. LEWIS: Objection to form, 4 foundation. 5 THE WITNESS: Yeah, I believe that's 6 right. 7 BY MR. BESSETTE: 8 Q. Let me show you what's been marked 9 as Exhibit-233 (indicating). This is the Golf Pro 10 article that you reference in your report at 11 Paragraph 13A? 12 A. Right. 13 Q. On Page 3 of the article, it states 14 that the company joined the ignominious ranks of the 15 big boys in another way this year; Tight Lies started 16 showing up in Costco, prompting a lawsuit from Adams 17 with two different aims. Do you see that? 18 A. Yes. 19 Q. Was this information released on or 20 about August 1, 1998 publish date? 21 A. I haven't seen any reason to think 22 so. 23 Q. Is this information in this report 24 new information -- 25 MR. LEWIS: Object to the form.</p>	<p>1 impact-type release or earnings-type 2 information for a large-cap company followed 3 widely by Wall Street or whatever the 4 examples were that we were talking about; 5 that is, you've got this article appearing to 6 the trade, as my understanding goes, in, most 7 likely, mid July, as best I can tell, and 8 that's not -- I don't think there's any 9 certainty as to the dates when this thing 10 actually reached people. 11 BY MR. BESSETTE: 12 Q. You're just guessing when it reached 13 people, right? 14 MR. LEWIS: Objection to form. 15 THE WITNESS: No. My understanding 16 is there has been work done on that issue 17 that the best information is that it was most 18 likely the middle of July, and if you analyze 19 the text of the article, it appears to make 20 sense that it would be out sometime in the 21 middle of July. 22 BY MR. BESSETTE: 23 Q. What work has been done? 24 A. My understanding is contact had been 25 made with -- I think it was the circulation director</p>

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1 of the magazine, who indicated a likely distribution
 2 date of mid month before the cover date.
 3 Q. Who is that person?
 4 A. I don't know.
 5 Q. Who made the contact?
 6 A. Counsel.
 7 Q. Which one?
 8 A. I'm sorry, I don't know which one of
 9 plaintiff's counsel.
 10 Q. Which one told you?
 11 A. I think it was Mr. Collins.
 12 There had been other contact that it
 13 might have been the middle of August with another
 14 person with some role, I believe, at Fairchild
 15 Publications, not positive of that but I think that's
 16 right, but the weight of that information seemed to go
 17 to the middle of July and our general experience about
 18 magazine release dates, and I think most people's, is
 19 that they come out before the cover date, not after.
 20 Q. Do you have any actual evidence that
 21 it came out in the middle of July?
 22 MR. LEWIS: Objection to the form.
 23 BY MR. BESSETTE:
 24 Q. That's a yes or no. Do you have any
 25 evidence that it came out in the middle of July?

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1 MR. LEWIS: Same objection.
 2 THE WITNESS: I'm not sure what you
 3 mean by evidence because in my view if you
 4 analyze the text, it looks to be likely that
 5 it came out earlier than later, that is, in
 6 July as opposed to in August, and we looked
 7 at the text pretty closely for that and we
 8 looked at the text of an article that
 9 appeared in the September issue of Golf Pro,
 10 and it appeared as though that most likely
 11 was written to come out in August.
 12 Having said all that, I am certainly
 13 not certain of that distribution date.
 14 BY MR. BESSETTE:
 15 Q. What text are you referring to?
 16 A. I'd have to try to go through this
 17 and pick it all out, but if there's some reference in
 18 here that indicates it was written before the IPO,
 19 which occurred around the beginning of January.
 20 MR. LEWIS: You said January.
 21 THE WITNESS: July, I'm sorry.
 22 Thanks.
 23 BY MR. BESSETTE:
 24 Q. I'd like to at least see what text
 25 you're talking about that leads you to the conclusion

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1 that it's likely it came out in mid July.
 2 A. This may take a while because I did
 3 this a while ago, but I'll go through it and see if I
 4 can find it.
 5 Q. Let's do it on the lunch break.
 6 A. That's fine with me.
 7 Q. The information about Tight Lies
 8 showing up in Costco, prompting a lawsuit, I think you
 9 said that was old information but also -- you started
 10 to go through some explanation about how it was messy
 11 as well. I'm not sure I understand. Is that
 12 information, whether it came out in July or on the
 13 publish date, is that old or new information?
 14 MR. LEWIS: Objection to form.
 15 THE WITNESS: I think what I said
 16 about that is that although it's technically
 17 old information in the sense that it refers
 18 to information that it occurred previously,
 19 that is, the lawsuit and the fact of the
 20 clubs showing up in Costco, but that it's not
 21 of the clean, simple national impact type of
 22 information we had discussed earlier when you
 23 asked me a general question about this sort
 24 of thing, which came out on Monday, repeated
 25 on Wednesday, would likely not have an effect

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1 on Wednesday.
 2 This is in the category, to me, of
 3 messier information, that is, in a trade
 4 publication, to my understanding distributed
 5 primarily to the trade, and following an
 6 earlier disclosure of the information in the
 7 form of a press release into a market in
 8 which there was no publicly traded stock for
 9 market participants to follow.
 10 BY MR. BESSETTE:
 11 Q. Do you think that information as
 12 conveyed in this article is material?
 13 MR. LEWIS: Objection to form,
 14 foundation.
 15 THE WITNESS: Yes.
 16 BY MR. BESSETTE:
 17 Q. How do you determine that?
 18 A. I think that taking the paragraph
 19 you focused on, the use of the words join the
 20 ignominious ranks of the big boys would suggest that
 21 for a small growth company to join the ranks of the
 22 big boys would be an important event. The ignominious
 23 suggests potentially important just by the use of the
 24 word. The fact that Tight Lies started showing up in
 25 Costco, I think would be important for the reasons we

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1 very likely arrived at different people's places of
2 business at different times, that is, over a period of
3 at least several days, if not a couple of weeks.
4 Once it arrives there and is picked
5 up and read by different people, if it sits around
6 golf pro shops, for example, its impact on the readers
7 may well spread further than the length of time it
8 takes for it to get to the various participants, so
9 even if you knew what date it started to be mailed on,
10 you'd have to take an event window approach to this
11 that is much more than a day or two and try to
12 determine what effect that might have.

13 It also appeared to coincide with
14 the known dates of Costco purchase orders and sales at
15 Costco from other data that we looked at, all of which
16 tended to center around the middle of July, so we
17 looked at it in that context but, no, we could not
18 identify specific dates to measure, and any
19 measurement without knowledge of the specific dates is
20 meaningless.

21 Q. The information in the Golf Pro
22 article is old information but material information
23 that you believe affected Adams Golf stock price?

24 MR. LEWIS: Objection to form,
25 foundation; mischaracterizes his testimony.

1 that Golf Pro?

2 A. Yeah.

3 Q. Why are you dating the Golf Pro
4 article August 1?

5 A. Because the convention that we
6 sometimes follow, although we're trying to fix this as
7 we go along wherever we can, is to put magazines with
8 cover dates of a month on the first day of the month
9 in which the cover date is. What we've begun doing
10 when we think to do it is to put an undated category
11 for the month at the beginning of the month to show
12 stuff that doesn't have a known publication date on
13 it, but we didn't do that here. It's a tough thing to
14 do when you're putting it in this kind of a display
15 because you don't want to imply something from putting
16 it there that you can't, but it ended up there for
17 that reason.

18 Q. The first trading day after August 1
19 is August 3, which is the last day you show on Page 61
20 of Exhibit B?

21 A. Right.

22 Q. That volume of 251,400, is that
23 above or below the normal volume you say you
24 calculated for Adams Golf during the class period?

25 MR. LEWIS: Objection to form.

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1 BY MR. BESSETTE:

2 Q. Do I have that right?

3 A. No, I can't say the end of that
4 sentence with any certainty; I can't say I believe it
5 affected the price on certain days in certain amounts
6 or anything like that. It appears likely that it was
7 a piece of information in the marketplace of
8 interested golf people, probably about the middle of
9 July, consistent with the time frame of Costco
10 purchase orders and Costco sales. I'd refer you back
11 to the last couple answers on this. That's all I can
12 say.

13 Q. A couple more questions, then we'll
14 take a lunch break.

15 Turn to your rebuttal report,
16 Exhibit-335, the Exhibit B that we looked at.

17 A. Right.

18 Q. If you go to Page 61 of 92, that
19 date is August 3, 1998, the date I want you to look
20 at, at the bottom.

21 A. Okay.

22 Q. Actually, go to August 1.

23 A. Right.

24 Q. Go across to the news item, second
25 one down, GP, Barney Adams -- Barney's Army. GP, is

1 THE WITNESS: As I sit here, I don't
2 remember exactly. I think it's slightly
3 above but I don't recall exactly.

4 BY MR. BESSETTE:

5 Q. As part of your work in looking at
6 the volume, did you have a normal volume that you
7 calculated and then looked at deviations from that on
8 any given day?

9 MR. LEWIS: Object to the form.

10 THE WITNESS: Yeah, we did. We have
11 sort of a normal volume and we looked at each
12 day's data with that normal volume in mind,
13 so yeah.

14 We also, just for completeness
15 because it may come up at some other point,
16 we do something that looks more quantitative
17 than that in our market simulation
18 methodology for aggregation of damages. I'm
19 not referring to that and I don't think you
20 were referring to that, so if that comes up
21 later, it's not part of this discussion.

22 BY MR. BESSETTE:

23 Q. Would you, at the lunch break, find
24 any reference that you can or tell me, check your
25 office, but what is the normal volume that you

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1 MR. LEWIS: Takes his testimony out
2 of context.

3 THE WITNESS: I think if I remember
4 her opinions correctly, that's a portion of a
5 sentence she may have said, that it was -- my
6 understanding is she said it was known to be
7 a problem in the industry but not certainly
8 equally to all companies in the industry, or
9 something to that effect.

10 BY MR. BESSETTE:

11 Q. Do you have any knowledge one way or
12 the other about how extensive or common gray marketing
13 was in the golf club manufacturing industry in 1998?

14 MR. LEWIS: Objection to form.

15 THE WITNESS: At a very detailed
16 level, I'd say no. I do know or I remember
17 that Callaway discussed it as a risk factor
18 or as a factor in its 10-K published in 1998
19 and that one of the other manufacturers, I
20 believe, had a press release or something to
21 that effect about gray marketing in May of
22 1998 and that it was a known issue which
23 could happen to companies, for example, as
24 set forth by Mr. Magnussen in his testimony
25 in his declaration.

1 other factor that could impact future cash flows, so
2 is it to that extent you have familiarity with gray
3 marketing?

4 MR. LEWIS: Objection to form.

5 THE WITNESS: Yeah, that's the
6 context in which gray marketing would affect
7 areas in which I have expertise.

8 BY MR. BESSETTE:

9 Q. The Golf Pro article again, the one
10 in front of you, did you undertake any analysis to
11 determine whether the information reported in that
12 article was ever cited in the public press before the
13 cover date of August 1, 1998?

14 MR. LEWIS: Objection to the form.

15 THE WITNESS: I don't recall that we
16 did see that. I think we had recalled more
17 that there were events mentioned in this
18 article and in the September Golf Pro article
19 that had either not occurred yet or which had
20 already occurred and were referenced in the
21 article which gave you some orientation
22 toward dates, at least with respect to when
23 it was written, and when it was then either
24 edited or not edited as a result of the dates
25 of the intervening events.

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1 BY MR. BESSETTE:

2 Q. You're not a gray marketing expert,
3 are you?

4 MR. LEWIS: Objection.

5 THE WITNESS: No, I wouldn't
6 describe myself as a gray marketing expert in
7 the marketing sense of that certainly. With
8 respect to its impact on the financial
9 results of companies and how that might be
10 perceived in the marketplace for stocks and
11 the value of stocks and that sort of thing, I
12 think I have expertise on that.

13 BY MR. BESSETTE:

14 Q. Expertise on how any factor affects
15 stock prices; is that what you're saying?

16 MR. LEWIS: Objection to form.

17 THE WITNESS: That isn't what I
18 said, but in the context of things that do
19 affect stock prices, the expectation of
20 future earnings and cash flows, effects on
21 business plans and that sort of thing, those
22 are areas in which I have expertise.

23 BY MR. BESSETTE:

24 Q. That's what I understood, and gray
25 marketing is just one of those things along with any

1 BY MR. BESSETTE:

2 Q. My question --

3 A. I don't think I remember seeing
4 press coverage of this article or events of this
5 article, that I can recall.

6 Q. How do you determine, Mr. Miller,
7 when information has entered the public market just as
8 a general proposition?

9 MR. LEWIS: Objection to form and
10 foundation.

11 THE WITNESS: Generally, if you're
12 fortunate with information such as appears in
13 things that you know the distribution dates,
14 you can identify it that way, that is,
15 articles that appear in dated Wall Street
16 Journals, business wires have time and date
17 stamps on them, other publications, you know
18 when they come out, so that's the easy ones.

19 Other than that, you can try to get
20 indications from dates that are on releases,
21 such as analysts' reports and that sort of
22 thing, although with analyst reports you have
23 the problem that it's not uncommon for the
24 contents of an analyst report to be released
25 to certain parties that communicate with the

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1 A. There was a memoranda prepared
2 either by corporate finance or equity capital market
3 person at Lehman. I'm not sure it was clearly
4 identified who it was. I think it was one of those
5 two groups, communicating to Adams to prepare for an
6 investor conference call indicating concerns being
7 expressed by customers about gray marketing and
8 expecting to have to answer questions about that topic
9 on the conference call.

10 Q. Is it your recollection that that
11 document was reflecting actual concerns by investors?

12 A. I don't remember the wording of the
13 document specifically enough, but I remember having
14 the impression that the author expected the topic to
15 come up at the conference call and that, for some
16 reason, I remember thinking that was based on investor
17 contact, and it may have, to some degree, reflected my
18 understanding of the equity capital market person's
19 function at Lehman with respect to monitoring the
20 price of underwritings and customer activity after the
21 IPO and that kind of stuff.

22 Q. (Indicating.)

23 I just handed you Exhibit-177. Is
24 that the document you're referring to?

25 A. Yeah, I believe this is.

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1 Q. This document is from Patrick
2 Walravens at Lehman. Do you know who that is?

3 A. Yeah, he was a corporate finance
4 person.

5 Q. Was he involved in the underwriting?

6 A. Yes, he was the -- trying to
7 remember his title. I think he was the associate on
8 the underwriting, if I remember correctly.

9 Q. The third page says concerns to
10 expect from investors. Is there something on this
11 page that leads you to believe that these are concerns
12 actually expressed by investors to Lehman?

13 A. Not other than the heading
14 suggesting that investors are likely to have these
15 concerns, at least with respect to this document. I
16 think this document clearly says what it says.

17 Q. Do you know whether investors --
18 actually, this is for the Adams Golf conference call.
19 This is dated July 29. Do you know the date of the
20 conference call being referred to?

21 A. I think it was early August. I
22 don't remember exactly.

23 Q. Do you know whether there were any
24 concerns expressed on the conference call from
25 investors about discounting or gray marketing or

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1 Costco?

2 A. No, I don't; I don't recall that.

3 Q. You don't recall whether they did or
4 did not or you just don't recall at all?

5 A. I don't recall whether they did or
6 didn't.

7 Q. These concerns are in boxes,
8 Orlimar, recent performance, Callaway, new products,
9 domestic sales, and discounting. Would it surprise
10 you to learn that of all of those concerns, the only
11 one not expressed on the conference call was gray
12 marketing or Costco or discounting?

13 MR. LEWIS: Objection to form and
14 foundation.

15 THE WITNESS: No, it wouldn't
16 surprise me one way or the other. I just
17 don't recall whether it occurred or not.

18 BY MR. BESSETTE:

19 Q. Did you review the conference call
20 transcript as part of your work in this case to see if
21 investors had expressed concern in August on the
22 conference call about discounting or gray marketing?

23 A. I don't believe I reviewed the
24 conference call transcript.

25 Q. Did you not think it was important

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1 to do that?

2 A. No, I didn't.

3 Q. Why?

4 A. Because given all the other
5 indicators we're talking about and given the
6 identification of the issue in this memo, it indicated
7 knowledge of the issue, certainly at Lehman, and it
8 was identified by Lehman as a concern to expect from
9 investors. I don't know why they would have had some
10 thought it was a concern to expect from investors
11 unless they thought exactly that.

12 Q. What's more important to your
13 analysis, what Lehman thought or what, actually,
14 investors thought?

15 MR. LEWIS: Objection to form and
16 foundation. Which analysis of what?

17 THE WITNESS: (No response.)

18 MR. BESSETTE: I'll withdraw that.
19 BY MR. BESSETTE:

20 Q. Turn to Paragraph 22 of your
21 rebuttal report, if you would, please.

22 A. (Witness complies.)

23 Q. In Paragraph 22A, you discuss Costco
24 national purchase orders for the purchase of Adams
25 Golf clubs, right?

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1 BY MR. GLUCKOW:

2 Q. Do you know whether there were any
3 discussions between the underwriters and Adams'
4 management concerning gray marketing or Costco in
5 connection with the Adams' press release in early June
6 concerning the Costco issue?

7 MR. LEWIS: Object to the form.

8 THE WITNESS: Again, I recall that
9 there was some discussion about that in
10 connection with the Costco issue as presented
11 in the press release and limited to that as
12 opposed to the overall problem of gray
13 marketing and sale of clubs through Costco
14 and the implications that that had for the
15 company.

16 BY MR. GLUCKOW:

17 Q. What's the basis for your last
18 answer?

19 A. My understanding of the conversation
20 -- the conversations that occurred around the Hoffman
21 letter with respect to addressing the SEC's inquiry
22 about whether the issue discussed in the Hoffman
23 letter had been investigated or examined by the
24 company according to materiality standard.

25 MR. LEWIS: We have to shut it down

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1 keep asking someone for views they have, it's
2 not going to be surprising if they have
3 views.

4 MR. GLUCKOW: If you were willing to
5 tell me he isn't going to offer any opinions
6 concerning the underwriters' due diligence
7 beyond that which is contained in his written
8 reports, I told you a long time ago this
9 could have been completed much sooner, but
10 you won't give me that, and because you won't
11 give me that, I need to know what opinions he
12 has formed on that topic.

13 MR. LEWIS: You still haven't
14 answered Todd's question of how much longer
15 do you have to go. We're talking about
16 travel arrangements at this point for people,
17 including the witness.

18 MR. GLUCKOW: Quite honestly, based
19 on this last exchange, I think I have
20 probably another half an hour, at least.

21 MR. COLLINS: Why don't you proceed
22 with your questioning.

23 BY MR. LEWIS:

24 Q. Mr. Miller, aside from the opinions
25 that have been expressed in your various reports about

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1 at this point. We're just at the time
2 lengths -- we're way past. This was
3 scheduled in this fashion at your guy's
4 request. There was no anticipation of going
5 after six o'clock on a Friday afternoon. We
6 all have different plans and travel plans.

7 I have one question, possibly the
8 famous one question, for Mr. Miller to get on
9 the record before we terminate.

10 MR. GLUCKOW: I'm going to object to
11 your shutting down the deposition because I
12 have not finished my examination, and I will
13 reserve all my rights.

14 MR. COLLINS: Any idea how much
15 more? We've been through this before and
16 asked you that question.

17 MR. GLUCKOW: Part of the problem is
18 every time I ask more questions, I'm getting
19 new opinions from the witness that are not
20 reflected in his written opinions in the
21 case.

22 MR. LEWIS: Because you're asking
23 him for them, you're asking what opinions he
24 may have formed aside of the opinions that he
25 has been engaged to express, and so if you

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1 underwriters' due diligence, are there any other
2 opinions that you have formed and believe you may
3 express in the litigation on the subject of due
4 diligence?

5 A. If asked about the topic of due
6 diligence with respect to other parties besides the
7 underwriters, I would offer the same sort of opinion
8 with respect to the conduct of due diligence by other
9 parties being signatories or defendants in this matter
10 as well.

11 Q. Can you describe briefly what the
12 basis of that opinion would rest upon?

13 A. Basically, my understanding that the
14 opportunity afforded for the due diligence defense is
15 the same, or essentially the same, under Section 11,
16 that is, that a party can establish that he performed
17 a reasonable and adequate investigation and thereafter
18 had a reasonable basis to believe that the prospectus
19 was not misleading, and that that would be the primary
20 basis, that is, that the same essential standard
21 applies and the same result occurred here.

22 Q. Have you formed any views,
23 preliminary or otherwise, as to whether the officer
24 and director defendants in this litigation are
25 entitled to avail themselves of the due diligence

<p style="text-align: right;">Page 310</p> <p>1 defense?</p> <p>2 A. As I said, my understanding is that</p> <p>3 that defense is available to them if they can</p> <p>4 establish it.</p> <p>5 Q. Have you seen any facts that lead</p> <p>6 you to believe they have established it or could</p> <p>7 establish it?</p> <p>8 A. I have not seen any indication so</p> <p>9 far that they have established it or, from what I have</p> <p>10 seen, could do so.</p> <p>11 MR. LEWIS: I have no further</p> <p>12 questions.</p> <p>13 MR. GLUCKOW: I'll note for the</p> <p>14 record that notwithstanding the supposed</p> <p>15 constraints on our time, Mr. Lewis just asked</p> <p>16 far more than his one question and he asked</p> <p>17 it without counsel for said director and</p> <p>18 officer defendants being here, and that, as I</p> <p>19 said, I have a lot more to cover and I'm sure</p> <p>20 that my colleagues in the defense side would</p> <p>21 like to speak to Mr. Miller about the topics</p> <p>22 that have just been testified to which, as</p> <p>23 far as I know, have not been covered in any</p> <p>24 of the written reports.</p> <p>25 MR. LEWIS: The record will reflect</p>	<p style="text-align: right;">Page 312</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 I hereby certify that the witness was</p> <p>4 duly sworn by me and that the deposition is a true</p> <p>5 record of the testimony given by the witness.</p> <p>6</p> <p>7</p> <p>8</p> <p>9 BETH A. BARKOCY, CSR</p> <p>10 Dated: August 16, 2006</p> <p>11</p> <p>12</p> <p>13 (The foregoing certification of this</p> <p>14 transcript does not apply to any reproduction of the</p> <p>15 same by any means, unless under the direct control</p> <p>16 and/or supervision of the certifying shorthand</p> <p>17 reporter.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 311</p> <p>1 my questions took about two minutes or less,</p> <p>2 and the record will reflect Mr. Bessette,</p> <p>3 without prior notice, absented himself from</p> <p>4 the deposition without saying he wasn't</p> <p>5 coming back, so I think we should close it</p> <p>6 down for the day.</p> <p>7 MR. GLUCKOW: Again, for the record,</p> <p>8 as far as I am concerned, this deposition has</p> <p>9 not concluded, remains open, and we reserve</p> <p>10 all of our rights.</p> <p>11</p> <p>12 ---</p> <p>13 (Witness excused.)</p> <p>14 ---</p> <p>15 (Deposition concluded at 6:27 p.m.)</p> <p>16 ---</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 313</p> <p>1 INSTRUCTIONS TO THE WITNESS</p> <p>2</p> <p>3 Please read your deposition over carefully</p> <p>4 and make any necessary corrections. You should state</p> <p>5 the reason in the appropriate space on the errata</p> <p>6 sheet for any corrections that are made.</p> <p>7 After doing so, please sign and date the</p> <p>8 errata sheet.</p> <p>9 You are signing same subject to the changes</p> <p>10 you have noted on the errata sheet, which will be</p> <p>11 attached to your deposition.</p> <p>12 It is imperative that you return the original</p> <p>13 errata sheet to the deposing attorney within thirty</p> <p>14 (30) days of receipt of the transcript by you. If you</p> <p>15 fail to do so, the deposition transcript may be deemed</p> <p>16 to be accurate as submitted and may be used in court.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>